

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK NUNEZ, et al.,

Plaintiffs,

**DECLARATION OF
CHRISTOPHER MILLER**

-against-

CITY OF NEW YORK, et al.,

11 Civ. 5845 (LTS)(JCF)

Defendants.
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UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF CORRECTION,

Defendants.
-----X

STATE OF NEW YORK)

:SS:

COUNTY OF QUEENS)

CHRISTOPHER MILLER declares pursuant to 28 U.S.C. Code §1746 under penalty of perjury that the following is true and correct:

1. I am the Deputy Commissioner of Classification, Custody Management and Facility Operations with the New York City Department of Correction ("DOC"), a position that I have held since July 25, 2022. Among my responsibilities is oversight of the intake processes at DOC.

2. I submit this declaration to the Court on June 16, 2023. This is my fifth report on intake; the others were submitted on February 8, 2023, March 20, 2023, April 17, 2023, and May 17, 2023.

A. New Admissions

3. Procedures for new admissions have not changed since my previous declarations.

4. DOC continues to meet its obligation to house individuals within 24-hours of their entry into custody in the courthouse, stopping the clock when an event outside our control makes it impossible to continue processing. According to data from the New Admission Dashboard, 1,594 new male admissions were housed in the Eric M. Taylor Center ("EMTC") during the 33-day period from May 13, 2023 (since data in my last declaration) to June 14, 2023. That is an average of approximately 48 a day. Of those, only 11 (.7 percent) were housed beyond 24 hours. The average time was 15.35 hours, excluding clock stoppages.¹ Of the 11 outliers, all but one (33.55 hours) was housed in less than 26 hours.

5. Newly admitted women at the Rose M. Singer Center ("RMSC") are also being housed within the 24-hour requirement. According to the New Admission Dashboard, 144 new admissions were housed in RMSC during the 33-day period, an average of approximately 4 a day. Of those, none was housed beyond 24 hours, and the average time was 12.29 hours, excluding clock stoppages.²

6. The Nunez Compliance Unit ("NCU") audited the intake process at EMTC on May 17, 2023, May 22, 2023, and June 5, 2023. As before, it compared Dashboard times to Genetec

¹ There were a total of 127 stoppages during the 33-day period: 84 for court, 14 for hospital, 1 for URGI care, and 28 refusals.

² There were a total of 13 stoppages during the 33-day period: 8 for court, 1 for hospital, and 4 refusals.

surveillance times. On May 17, Genetec showed that all 10 of the individuals tracked were housed within 24 hours. For all 10, the Dashboard arrival times coincided with their Genetec arrival times within 20 minutes. For 7 of the 10 individuals, the housing times coincided with the Genetec times within 20 minutes. For 2 of those 10 individuals, the Dashboard times were 24 and 31 minutes before the individuals were observed entering the housing unit on Genetec. For the third, the Dashboard time was 30 minutes after the Genetec time.

7. On May 22, a second audit was conducted. Again, NCU tracked 10 individuals entering EMTC. All 10 were housed within 24 hours. For 5 of the 10 individuals, the Dashboard arrival time differed from the Genetec time by more than 20 minutes. Each of the five were shown on the Dashboard as arriving 45 minutes before they were observed on Genetec arriving at intake. Apparently, the five were still on the bus in the sallyport when they were recorded as in the facility. For 9 of the 10 individuals, the Dashboard housing time coincided with the Genetec housing time within 20 minutes. The tenth individual was brought to the housing area corridor but refused to enter the unit and was returned to intake. The Dashboard operator mistakenly reported him as housed when he was in the housing area corridor.

8. As a result of these errors, three staff members received retraining, and one (who was responsible for errors on prior audits) was removed from operating the Dashboard.

9. The third audit was conducted on June 5, 2023. Fourteen individuals were tracked. Genetec showed that 12 of the 14 individuals were housed within 24 hours not excluding clock stoppage time. One individual was housed in 26 hours and 33 minutes but was out to court for 11 hours and 19 minutes. The other was housed in 25 hours and 49 minutes but was out to court for 7 hours and 50 minutes. For all 14 individuals, the Dashboard arrival times and the Genetec arrival times coincided within 20 minutes. And for 13 of the 14 individuals, the Dashboard housing times

coincided with Genetec times within 20 minutes. The one outlier showed a Dashboard housing time one hour and 45 minutes before the housing time shown on Genetec. The reason has not yet been determined.

10. On March 23, 2023, the Department issued an updated Operations Order governing the processing of new admissions in Intake. The revisions to the prior policy reduced the number of clock stoppages (for example, it eliminated a stoppage for mental health evaluations in the clinic) and required those returning from court or the hospital to be put at the front of the intake queue. The policy was issued, however, without the Monitoring Team's review and has now (as of June 20, 2023) been revoked. The Department will confer with the Monitoring Team and reasonably implement their recommendations before issuing a new policy. In the meantime, we have given verbal instructions that the Department should not use clock stoppages during mental health evaluations and that individuals returning from court or the hospital are to be placed at the front of the intake queue.

B. Inter/Intra Facility Transfers and Facility Intake Areas

11. The five-person team that monitors individuals in the facility intake areas discussed in my April 17, 2023 and May 23, 2023 declarations remains in place and continues to expedite movement. As I have noted in earlier declarations, at any time there is one person from the five-member team who is monitoring individual movements through facility intake. Every four hours, a member of the team receives information from each facility on who is in each intake area (the individual's name, book and case number, the reason that they are there, and the time of their arrival) as well as a screenshot of the ITS system and a photograph from the Genetec system for each pen. The assigned officer also has access to the live Genetec video feed from the facility intake areas. The assigned officer checks whether individuals noted at each four hour mark have

been in the intake area for four hours or more, and if so contacts the facility for an explanation and takes steps to expedite the individual's movement. The members of this team, as well as all intake supervisors, have been instructed that no individual should remain in an intake area for more than 24 hours. (If an individual is not present in Intake at any four-hour mark, then of course they will not be noted in this system – but that means that they were in Intake for less than four hours.)

12. Using ITS-generated data, we capture the times for individuals who are changing their housing units through the inter/intra facility transfer process. I review the ITS generated data daily. From May 17 to June 14, the ITS data shows that there were 834 inter-facility housing assignment transfers and 350 intra-facility housing assignment transfers. According to the ITS data, for inter-facility transfers, the average time in intake (counting the time in both the sending and the receiving facility) was 2.9 hours, and the maximum time was 12.4 hours. For intra-facility transfers, the average time was 5.4 hours and a maximum time of 14.1 hours.

13. DOC data quality analysts have been reviewing the ITS system for errors. Among the steps recommended are (i) adding an alert for duplicate or contradictory data entry and (ii) allowing for corrective action if data is entered in error but providing the capacity to audit any such change to prevent manipulation. We hope to implement these recommendations this summer. The Department is still not perfect in entering every intra-inter-facility transfer in the ITS system. The percentage properly entered on any given day varies from 65% to 90%. We are working to improve the reliability of the entry of data into the ITS system and will confer with the Monitoring Team on those efforts. The observations of the five-person team, however, give me full confidence that no non-new admission individual is in intake anywhere close to 24 hours.

14. I understand that in late May, the Monitoring Team raised a concern that some of the individuals present in the facility intake areas were not being tracked in the ITS system. The

Monitor's observation was correct. Specifically, people present for reasons other than a reassignment of their housing location (i.e., people who are changing their beds) are not being entered into ITS, such as those going to court, the hospital, a clinic in a different facility, or religious services in a different facility. I also understand that the Monitor has noted that the procedure set out in my Memorandum of March 23, 2023, referenced in part in my April 17, 2023 Declaration at ¶ 10, was not being fully implemented.

15. I initially intended my March 23, 2023 Memorandum, to direct that all individuals in the facility Intake areas be entered into the ITS system. I quickly learned that putting the names of 400 individuals, who go out to court, as many as 200 at any one facility, into the ITS system was burdensome and would slow the court transfer process, which of course is undesirable. After discussing this matter with others, I orally modified my directive so that it applied only to persons who were changing beds, which the Department refers to as "inter and intra-facility transfers."³ Individuals who go out to court, to work, or to religious services a few times a year are now not recorded in the ITS system. Their movement in and out of intake, however, is captured in other ways, including by the four-hour intake checks described above.

16. My Declaration of April 17, 2023, may have left the impression that every individual passing through intake was being recorded in the ITS system. That was not my intention, and I regret any confusion.

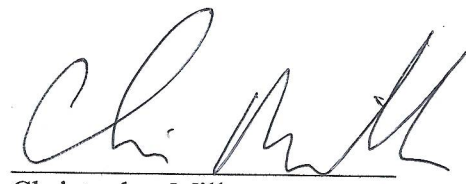
17. I now understand that the *Nunez* Second Remedial Order requires the reliable tracking of *all* individuals in all Intake areas. The Department intends to fully comply with that requirement going forward. I have been tasked with proposing the most efficient ways to track

³ I now understand that the Monitor has used the term "inter and intra-facility transfers" to refer to all people in the intake areas for the purpose of entering or exiting a facility, for any reason; that is not how the Department has used it.

non-transfer individuals. I hope to develop such a proposal within the next week. My proposal will be shared with the Monitoring Team for its comment and recommendations before implementation.

18. I will continue to closely monitor our efforts and will confer with Department official and the Monitoring Team regarding compliance and their recommendations for improvements.

Dated: June 20, 2023
East Elmhurst, New York


Christopher Miller